SUMMARY OF COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from September 1, 2003, through October 1, 2003, on IDEM's draft rule language. IDEM received comments from the following parties:

ALCOA Warrick Operations (ALCOA)
American Electric Power (AEP)
CASE Coalition (CASE)
Cinergy Power Generation Services, LLC (CPG)
Citizens Action Coalition of Indiana (CAC)
DaimlerChrysler Corporation (DCC)
Dominion (DOM)
Eli Lilly and Company (ELC)
Hoosier Environmental Council (HEC)
Indiana Cast Metals Association (INCMA)
National Starch & Chemical (NSC)
Northern Indiana Public Service Company (NIPSCO)
Partners for Pollution Prevention (PPP)
Save the Dunes Council (SDC)
Save the Valley (STV)
Trinity Consultants (TRI)
Valley Watch, Inc. (VWI)

Following is a summary of the comments received.

General Rulemaking Comments

Comment: We strongly support IDEM's efforts to adopt improvements to the NSR regulations consistent with the federal rules and in an expeditious manner. We support IDEM's statement that the rule will not have detrimental effects on Indiana's air quality. We urge IDEM to go further and recognize that the rule is expected to have beneficial effects in reducing air emissions through implementation of the clean unit test, PALs, and pollution control project exclusions as well as the actual-to-projected-actual emissions test. IDEM should adopt all elements of the federal rule. (CASE)

Comment: We strongly support IDEM's efforts to adopt improvements to the NSR regulations consistent with the federal rules and in an expeditious manner. We support IDEM's statement that the rule will not have detrimental effects on Indiana's air quality. (ALCOA)

Comment: We appreciate the efforts of the Office Air Quality to promulgate the federal NSR reform rules as quickly as possible. In addition, we generally support the agency's direction of adopting the federal rules with few differences. (ELC)

Comment: We support IDEM's efforts to implement the federal reforms. We urge IDEM to expeditiously approve these rules and submit the revised rules as State Implementation Plan revisions. (DOM)

Comment: We support IDEM's initiative to expeditiously incorporate the revisions to the U.S. EPA rules into the state regulations in an essentially unchanged fashion, except for those cases where existing state requirements necessitate the U.S. EPA NSR rules be structured to avoid anti-backsliding concerns. (AEP)

Comment: We support the December 2002 final rule, as well as IDEM's efforts to expeditiously revise it's State Implementation Plan. (DCC)

Comment: The rules should be incorporated by reference with a few issues dealt with through separate rulemakings if needed. We are concerned that straying from the identified requirements of the federal rule will result in a significant delay in the adoption and implementation of these reforms. There is no clear guidance from U.S. EPA regarding the latitude state's have to stray from the specific provisions of the federal rule. Implementation of these reforms may be significantly delayed if U.S. EPA will not approve the rules. We support a two-phase approach: adoption of the federal rule without modification to insure federal approval, followed by adoption of any modifications believed to enhance the rule. (INCMA)

Comment: We believe it is premature for IDEM to proceed with this rulemaking because the Bush administration's NSR rollbacks are being challenged in court. If the litigation challenging the federal rollbacks is successful, Indiana residents would receive less protection than under the current rules until the current rules could be restored. (CAC) (HEC) (SDC) (STV) (VWI)

Comment: Significant variations between state and federal NSR regulations, and among various state programs, are problematic for efficient business planning, particularly for a company with operations in many states. Variations create potential confusion for the public who will not be able to rely on one set of rules. If the state NSR rules are different, there would be delays and possible confusion when using any U.S. EPA guidance on the new NSR reform rules. Interstate differences with NSR will create an uneven set of requirements and may affect important company decisions related to manufacturing capacity and ultimately the location of jobs in the U.S. We support uniformity in regulations at the state and federal levels to the maximum possible extent. We recommend that IDEM adopt rules that are consistent with the federal rules unless the differences are clearly justified by environmental reasons unique to Indiana. (DCC)

Comment: We encourage IDEM to revise this proposal to include the elements of the Routine Maintenance Repair and Replacement rule revisions to the NSR program signed by U.S. EPA Administrator Horinko on August 27, 2003 within this rulemaking instead of placing them in a separate rulemaking that will lag this rulemaking by only a few months. We believe it would be efficient for the agency to make those changes prior to taking this revision to the APCB in February 2004. We encourage IDEM to make those changes at this time and not wait. We do not believe the expense and time required for an additional rulemaking is justified. (AEP)

Comment: The rules as proposed are only based on the language of the final U.S. EPA NSR reform rule of December 31, 2002 and additional IDEM modifications. An integral part of

the NSR reform effort includes the revisions and clarifications provided to the regulated community for routine maintenance, repair and replacement by the August 27, 2003 final U.S. EPA rule. This RMRR rule must be included in the IDEM rule as expeditiously as possible to provide the affected parties with the regulatory reforms needed to operate efficiently. We recommend IDEM include the provisions of the RMRR rule, as signed by the acting U.S. EPA administrator on August 27, 2003, in this rulemaking. (NIPSCO)

Comment: We encourage IDEM to incorporate by reference the language from the signed version of the amendments to 40 CFR 51.165 and 40 CFR 52.21, Prevention of Significant Deterioration and Non-attainment New Source Review: Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion. (CPG)

Comment: In relation to federal criteria for approving alternatives, we encourage IDEM to begin with federal baseline language in rulemaking to gain acceptance and consider modifying language for the state later. (INCMA)

Comment: An underlying principle that must guide any proposed changes to Indiana's NSR rules is that no change results in increased total emissions or authorizes increased emissions when compared with the current NSR rules. IDEM's proposed rules must not allow backsliding in Indiana's efforts to achieve cleaner air. (CAC) (HEC) (SDC) (STV) (VWI)

Comment: IDEM must ensure that SIP changes do not interfere with attainment of an air quality health standard. The Clean Air Act (CAA) prohibits modification of clean air programs in effect before the CAA Amendments of 1990 unless the modification results in equal or greater emission controls. The CAA also prohibits backsliding with regards to emission standards or limitations in SIPs.

IDEM has stated that some of the rule changes could in fact result in some emission increases. This would be a violation of Sections 193 and 116 of the CAA. (CAC) (HEC) (SDC) (STV) (VWI)

Comment: IDEM proposes specific revision procedures to address clean unit designations, listed PCPs, non-listed PCPs and PALs. We support IDEM's approach to use minor modification procedures for clean units and listed PCPs and to use significant modification procedures for non-listed PCPs and PALs. (CASE) (ALCOA)

Comment: We believe the phrase "federally enforceable" should never be used in the Indiana rules because it is inconsistent with three significant court rulings in 1995 that found U.S. EPA had not provided adequate justification for requiring federal enforceability. U.S. EPA provided no new justification for using federal enforceability in response to the court rulings in the preamble to the final rules. Instead, U.S. EPA only offers that the 1995 court rulings held that it was impermissible to require federal enforceability as an element of defining "potential to emit", and that other uses of the concept are still permissible. This approach ignores the merits of the 1995 court rulings.

We believe it does not jeopardize Indiana's ability to obtain SIP approval for its NSR programs. Indiana should not agree to include the phrase in its rules unless U.S. EPA justifies the use of federal enforceability in each instance where it is used in the major NSR rules. (ELC)

Comment: We requested that the rule provide that BACT be retroactive to the date of the actual physical change, as opposed to BACT at the time of discovery. IDEM's response to this comment was non-responsive. It simply said this was an implementation and compliance issue that did not need to be addressed in the rule. That is not correct. The rule must provide guidance to both the regulated entity and to IDEM so when enforcing its requirements the rule actually provides BACT at the time of the physical change or BACT at the time of discovery that BACT should have applied earlier. It is not acceptable for IDEM's Office of Enforcement to pick and choose what it will do. The rule must give direction for what IDEM's Office of Enforcement is to do.

We requested that the rule include the ramification or a list of the actions IDEM may take when a facility reports an exceedence of its projected actual emissions. IDEM's response was that the exceedence might be referred to enforcement. The rule needs to specifically state all the different actions IDEM may take and the basis for determining which action to take. For example, one action could be to enforce. But the rule should state what conditions make enforcement appropriate. Alternatively, an appropriate action could be to allow a specified period of time for the permittee to retest or provide a written report to explain other causes of the exceedence that are not related to the physical change made. (INCMA)

Comment: Clarification should be provided as necessary in individual locations within the proposed new rule language that BACT applies in attainment areas and LAER applies in nonattainment areas. It should be acknowledged that a unit that meets LAER more than meets the requirements of BACT. For a unit seeking clean unit designation that meets LAER in an attainment area, it should be clearly acknowledged that such a unit more than satisfies the requirements for a clean unit designation. (NIPSCO)

Comment: We believe it would be appropriate to provide a clarification or description of P.L. 231-0003, SECTION 6, and where copies may be obtained. (NIPSCO)

Comment: IDEM has indicated that it plans to revise the Nonrule Policy Document regarding Title V annual compliance certifications to require that a permittee include exemptions from NSR in its annual certification. IDEM needs to provide that language in the rules so that stakeholders can review and have input on this change. (INCMA)

Fees

Comment: We support the idea that OAQ should be able to collect fees for new review functions created by the NSR reform rules, such as a technology review to obtain a clean unit designation or establishing PAL permits. In addition, we recognize the difficulty of developing fair and equitable fee rates that will enable the agency to collect some funds to offset its expenses. However, we believe the proposed fees for establishing a PAL are too high. We recognize that establishing PAL permits can be resource intensive. But the idea that establishing a PAL permit for a complex manufacturing facility is automatically a resource intensive activity is too simplistic. PAL fees should not reflect the complex regulatory requirements already applicable to a facility. We recommend either the emission fee rate in dollars per ton be lower or the PAL fees be based on the number of emission sources that have to be evaluated and

monitored. In the alternative, the rules could establish an overall cap for fees, such as $50,000.

In addition, the proposed rules appear to impose the same fees when a PAL is reestablished after 10 years. Although the PAL rules call for a reevaluation of the PAL levels when reissuing a PAL permit, the level of effort to conduct this review will not be as extensive. The fees for reestablishing a PAL permit should be significantly lower than establishing the permit. (ELC)

Comment: The fee provisions for a PAL are too high. At $40 per ton, this would discourage companies from applying for a PAL. The fee should be lowered or adjusted to less than $40,000 per pollutant cap if a source requests a PAL for more than one pollutant. (INCMA)

Comment: The fee of $3,500 required for a permit to "allow" a source to install or initiate a pollution control project is the same fee required for the installation of a significant emissions unit. If IDEM wants to encourage pollution control projects, it should not impose fees on a source to do so. (INCMA)

Attainment and unclassifiable areas

Comment: The proposed revisions in 326 IAC 2-2-2(b) reference attainment and unclassifiable areas as specified in sections 107(d)(1)(A)(ii) or 107(d)(1)(A)(iii) of the Clean Air Act. The proposed language shows the deletion of the current reference to the listing of attainment and unclassifiable areas in 326 IAC 1-4. This is inconsistent with the proposed language of 326 IAC 2-2-2(g) which retains the reference to 326 IAC 1-4 for nonattainment areas, not references to the Clean Air Act. We would appreciate a clarification on why the references to the CAA are used for the attainment/unclassifiable portions while the nonattainment area references are to 326 IAC 1-4. (NIPSCO)

Annual emission information

Comment: In 326 IAC 2-2-8(b)(4) and 326 IAC 2-2-8(b)(5), we question the need to have the owner or operator provide the listed annual emission information within 60 days of the end of the year. The information is included in the annual emission statement that is provided by the owner or operator to IDEM as specified in the schedule in the emissions reporting rule. Submittal of the information in the time period listed in this proposed rule is unnecessarily in advance of the annual emission statement submittal deadline and duplicative of the efforts and information provided in the annual emission statement. We recommend the submittal deadline proposed in this provision be changed to coincide with the deadline of the emission reporting rule to prevent imposition of an unnecessary early reporting burden on the regulated community. (NIPSCO)

Hydrogen fluoride

Comment: We recommend that Indiana's rules include explicit language to ensure there is no confusion about whether hydrogen fluoride should be excluded from the emission estimates for fluorides. 326 IAC 2-2-1(xx)(L) should be amended to read, "(L) Fluorides **(excluding hydrogen fluoride)**: three (tons per year);"

In addition, we recommend hydrogen fluoride should be excluded from the ambient impact analysis for fluorides that is required to determine whether preconstruction monitoring and other ambient impacts are needed. 326 IAC 2-2-4(b)(2)(A) should be amended to read: "(L) Fluorides **(excluding hydrogen fluoride)**: 0.25 g/m^3, 24-hour average;"
(ELC)

Definitions

Comment: The definitions of baseline actual emissions in 326 IAC 2-2-1(e) and 326 IAC 2-3-1(d), and projected actual emissions in 326 IAC 2-2-1(rr) and 326 IAC 2-3-1(mm), both include language intended to address emissions from malfunctions, startups, and shutdowns if affected by a proposed project. The wording of these provisions could be clarified as follows:

326 IAC 2-2-1(e)(1)(A) and 326 IAC 2-2-1(e)(2)(A) should read:
(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent quantifiable and to the extent they **are affected by** ~~affect~~ the project.
326 IAC 2-2-1(rr)(2)(A)(ii) should read:
(ii) include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions **to the extent they are affected by the project**; and
326 IAC 2-3-1(d)(1)(A) and 326 IAC 2-3-1(d)(2)(A) should read:
(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent quantifiable and to the extent they **are affected by** ~~affect~~ the project.
326 IAC 2-3-1(mm)(2)(A)(ii) should read:
(ii) include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions **to the extent they are affected by the project**; and
(ELC)

Comment: The clean unit definition in 326 IAC 2-2-1(m) is unclear because it does not clearly identify if the unit has to meet all three of the items in (m)(1), or only one of (m)(1)(A), (m)(1)(B), or (m)(1)(C), or if it only needs to meet one of the requirements of (m)(1), (m)(2), or (m)(3). Clearer language would be appreciated. (NIPSCO)

Comment: In 326 IAC 2-2-1(m)(1)(B), it would be helpful if this language was more specific regarding the compliance with BACT or LAER. Since BACT and LAER vary over time, a clarification regarding the BACT or LAER at the time of submittal of the application is recommended. (NIPSCO)

Comment: What was the justification for adding the language that an increase or decrease in actual emissions is creditable only if the increase or decrease occurs within a reasonable period as determined by the department? What is the criteria that will be used to

establish a reasonable time? (INCMA)

Comment: The language in 326 IAC 2-2-1(ll) at the end of the third sentence "...through the PCP.2-2.3-1(c)(1)." is confusing. Was it intended to say "...through the PCP provisions of 326 IAC 2-2.3-1(c)(1)."? (NIPSCO)

Comment: IDEM states that it is modifying the definition of "regulated NSR pollutant" to include asbestos, beryllium, mercury and vinyl chloride. We object to inclusion of these pollutants in the federally enforceable section of the Indiana's PSD program because it is prohibited by the Clean Air Act (CAA). Section 112(b)(6) of the Act clearly prohibits regulation of the pollutants IDEM proposes to regulate under the PSD program, each of which is a hazardous air pollutant listed in CAA §112(b). While Section 116 of the Clean Air Act provides that nothing prohibits a state from adopting and enforcing provisions that are more stringent than federal law, it does not authorize IDEM to make any state law it chooses federally enforceable, particularly where such is expressly prohibited by Section 112(b)(6). If IDEM wishes to regulate these pollutants, it must do so as a matter of state law only and not submit this aspect of the regulations for SIP approval. If IDEM wishes to obtain SIP approval for the regulation of these pollutants, it must show that such regulation is required to attain or maintain compliance with a NAAQS and that it does not conflict with the express prohibition under Section 112(b)(6). (CASE) (ALCOA)

Comment: Under Indiana Code 13-14-9-4, IDEM is required in a notice of second public comment period to identify the environmental circumstance or hazard that dictates the imposition of a requirement that is not imposed under federal law and to provide examples where the federal law is inadequate to provide that protection along with the estimated fiscal impact and benefits. IDEM is also required to describe the availability of material relied upon. IDEM did not provide this required information regarding its imposition of an additional requirement to include asbestos, beryllium, mercury and vinyl chloride under the NSR rules. (INCMA)

Comment: In 326 IAC 2-2-1(uu)(1), the language is vague and needs clarification. It appears the intent of this subdivision is to include constituents or precursors of the pollutants for which a national ambient air quality standard (NAAQS) has been promulgated by U.S. EPA. The following language is recommended to provide this clarification consistent with the presumed intent:

> (1) Any air pollutant for which a national ambient air quality standard (NAAQS) has been promulgated and any U.S. EPA identified constituents or precursors of a NAAQS pollutant.

(NIPSCO)

Comment: The provision in 326 IAC 2-2-1(uu)(5) is unclear. The inclusion of the cross reference to "any pollutant listed in subsection (xx)" is a circular reference because 326 IAC 2-2-1(xx)(1)(V) refers to "Any regulated NSR pollutant", the very term 326 IAC 2-2-1(uu)(5) is attempting to define. Because this is a deviation from the federal language, we recommend IDEM not deviate from the federal language. If IDEM insists on deviating from the federal

language, it should do so carefully and consistently. (NIPSCO)

Applicability Test

Comment: On the issue of real emissions increase test as applied to increased utilization, IDEM responded that it believes that the new basic applicability test focuses on "real emissions increases" and that many of the proposed modifications will now only be subject to the minor NSR program. IDEM has not addressed, in its comments or in the rules, how it plans to review "increased utilization" issues that involve collateral equipment. In the past, IDEM has assumed that any increases in emissions were caused by the modification. Does IDEM now propose to allow the source to make this determination and not to impose any assumptions? (INCMA)

Comment: We strongly support the move to an "actual to projected actual" emissions applicability test. (NSC)

Comment: Related to the move to an actual to projected actual emissions applicability test, we believe there should be a clearly stated exemption for emissions that are not attributable to the modification. (INCMA)

Comment: We oppose the proposal to allow the "actual-to-potential" emissions applicability test to be replaced with an "actual-to-projected-actual' applicability test. Allowing a polluting source to estimate its future emissions in order to determine applicability opens up the process to abuse resulting in inaccurate projections and essentially allowing the source to control whether the rules apply. (CAC) (HEC) (SDC) (STV) (VWI)

Comment: We oppose the "look back" provision of the Bush NSR rollbacks which would allow sources to choose their own 24 month baseline period from the previous ten years. Such a provision would allow for increases in emissions because the source could choose the most polluting 24-month period as its baseline. (CAC) (HEC) (SDC) (STV) (VWI)
Comment: We strongly support the look-back period of 10 years and agree with the federal review of a reasonable business cycle. (NSC)

Clean Units

Comment: IDEM is proposing a provision less stringent than the federal rule by making clean unit designations more difficult to obtain. This discourages units from obtaining clean unit status and thereby could limit the air quality benefits intended in the federal rule. The methodology of the federal rule should be followed, including the federal methodology for BACT determination. (NIPSCO)

Comment: We are concerned with IDEM's proposed changes and we request that IDEM adopt U.S. EPA's approach for determining the level of control for clean units. IDEM's proposal to perform a case-by-case BACT/LAER analysis creates a significant burden for clean unit applicants, as well as the permitting agency, while creating little added environmental benefit. It is unlikely that a case specific BACT or LAER analysis will result in any significant difference than using an average of, or at least as stringent as recent decisions. IDEM's proposed

approach creates a time-consuming and labor intensive process while U.S. EPA's approach is more streamlined and still provides assurances for having only well-controlled sources designated as clean units. (DCC)

Comment: We appreciate IDEM's position that units for which a clean unit designation is requested be required to meet BACT or LAER. We also appreciate IDEM's position that this BACT/LAER requirement be met with a "top-down" approach rather than an allowance for averaging BACT/LAER limits. We strongly support these requirements because they will help ensure that these units are adequately controlled. (CAC) (HEC) (SDC) (STV) (VWI)

Comment: We agree that it is appropriate for IDEM to clarify what might be considered a physical or operational characteristic that formed the basis for a BACT or LAER determination. However, IDEM should clarify in its response to comments or preamble explanation of the rule that there may be cases in which there are no additional physical or operational characteristics beyond the BACT or LAER determination that need to be specified in the permit. If a permit's BACT or LAER determination is detailed, the permit terms should be sufficient to establish clean unit status. When physical or operational characteristics do need to be specified, we agree with IDEM's indication in the preamble that any one of these or some other characteristic proposed by the permittee may be appropriate and that "redundant" characteristics should not be imposed. (CASE)

Comment: We request that IDEM clarify the form that the clean unit designation "terms" in the permit will take. Under the regulatory language, the Title V permit is required to specify the conditions of maintaining the clean unit designation. Specifically, it must include any physical or operational characteristics that formed the basis for the BACT or LAER determination. We are concerned that the proposed options of potential emissions, production capacity or throughput could be viewed as being affected by a project even though a plant does not intend to exceed the characteristics as listed in the permit. We do not believe the source should lose its clean unit designation unless it actually deviates from the operational characteristic listed in the permit. This issue can be addressed by giving a source the option of one of the following two approaches, which we believe are consistent with IDEM's regulations:

(1) If a plant wishes to accept a physical or operational characteristic as an actual, enforceable limitation on its operations, it may do so. Future projects at the clean unit that may affect its capabilities relative to these characteristics would not be considered to have altered the characteristics because the plant would remain subject to the limitations in the permit. If the plant wishes to exceed these limitations, a permit revision would be required.

(2) Alternatively, a plant can accept as conditions for maintaining the clean unit designation the physical or operational characteristics determined by IDEM. The permit would state that, if the plant decides to implement a change that would alter one of these characteristics, the clean unit designation would no longer apply and the source would become subject to the basic actual-to-projected-actual test that applies to all existing units. No permit revision would be required because the permit would already state the consequences of altering the designated physical or operational characteristics.

(CASE)

Comment: IDEM proposes that a facility may not obtain the clean unit designation for projects that were undertaken prior to issuance/approval of its rules unless a major NSR permit was obtained. While we believe that IDEM should adopt the federal approach, we understand the department's concern about the resources that might be needed to recreate BACT or LAER determinations. Because IDEM and sources are now on notice of this requirement in the rule, these resource issues should not present a problem for any controls installed after March 3, 2003, the effective date of the federal rule. Therefore, IDEM should state that any controls installed after March 3, 2003 should qualify for the clean unit designation. We are concerned that, although IDEM is moving expeditiously to adopt the new rules, there may be a substantial time period before U.S. EPA approval of the new rules simply due to the time required to complete the appropriate procedures. In the meantime, sources and IDEM are well aware of what is required to establish a clean unit designation and there should be no hardship in meeting these requirements for minor NSR permits issued after March 3, 2003. (CASE)

Comment: The language in 326 IAC 2-2-10 does not contain any substantive information about what information is required of the applicant who requests a clean unit designation per the provisions of 326 IAC 2-2.2-2. The specifics mentioned under paragraph (1) of this section appear to only apply to new sources or major modification. We presume that IDEM will issue guidance that will more closely identify the information needed by the agency in order to issue a clean unit designation per the provisions of 326 IAC 2-2.2-2. However, we recommend that the agency consider language in this section identifying the information necessary for IDEM to make the clean unit designation. (TRI)

Comment: The existing language in 326 IAC 2-2.2-2(c)(2) does not clearly indicate that the requirement to demonstrate that the allowable emissions from the unit for which clean unit status is being requested is the responsibility of the owner or operator applying for this status. Unlike paragraph (c)(1)(A) of this section, there is no phrase indicating that the owner or operator must make this demonstration. If it is the intent of the agency to have the owner or operator complete this demonstration as part of the application for the clean unit status under this section, a phrase should be added that would direct the interested parties to 326 IAC 2-2-4, 2-2-5, 2-2-6, and 2-2-7. If it is not the intent of the agency to have the owner or operator complete this demonstration as part of the application for the clean unit status under this section, then the proposed changes made by the agency to 326 IAC 2-2-4, 2-2-5, 2-2-6, and 2-2-7 should be reconsidered or eliminated. (TRI)

Comment: We suggest that owners or operators of stationary sources that request a clean unit designation, but have not gone through a major NSR permitting review be allowed, at a minimum, the same exemptions as allowed for new or modified sources. Suggested changes to 326 IAC 2-2-4(b)(2) are:

(b) Exemptions are as follows:

(1) ....

(2) A source or modification **or clean unit designation per 326 IAC 2-2.2-2** shall be exempt from the requirements of this section with respect to monitoring for a particular pollutant if:

(A) the emission increase of the pollutant from a new source or the net emissions increase of the pollutant from the modification, **or the allowable emission rate**

on which the clean unit designation is based would cause, in any area, air quality impacts less than....

(B) the concentration of the pollutant in the area that the source or modification **or clean unit designation** would affect are less than the concentrations listed in clause (A), or the pollutant is not listed in clause (A).

(TRI)

Comment: The existing language in 326 IAC 2-2-5(a) does not address, in all situations, what is required of an owner or operator of a stationary source that is requesting a clean unit designation but has not gone through a major NSR permitting review. The existing paragraph only addresses situations that involve allowable emissions increases. It is possible that an owner or operator may request a clean unit designation for a unit that has not gone through a major NSR permitting review and does not trigger the need for an allowable emissions increase.

We suggest that the language be clarified so that owners or operators of stationary sources that request a clean unit designation but have not gone through a major NSR permitting review and are not requesting allowable emissions increases have definitive language on the required demonstration. Suggested changes to this section are:

(a) The owner or operator of the proposed major stationary source or major modification, or the owner or operator that requests a clean unit designation **per 326 IAC 2-2.2-2**, shall demonstrate that allowable emissions increases in conjunction with all other applicable emissions increases or reductions (including secondary emissions) will not cause or contribute to air pollution in violation of....

(1)....

(2) any applicable maximum allowable increase over the baseline concentration in any area, **as described in section 6 of this rule.**

In the case of a clean unit designation, the owner or operator must demonstrate that the allowable emission rate on which the clean unit designation is based will not cause or contribute to air pollution in violation of the items noted in (1) and (2) above.

(TRI)

Comment: The existing language in 326 IAC 2-2-6(a) is confusing in that it appears to address "increased emissions." It is possible that an owner or operator may request a clean unit designation for a unit that has not gone through a major NSR permitting review and does not trigger the any emissions increase.

We believe the language we proposed in our comment for 326 IAC 2-2-5(a)(2) would provide sufficient direction to the owner and operator who requests a clean unit designation for a unit that has not gone through a major NSR permitting review and does not trigger the any emissions increase.

We suggest the language IDEM has added in section 6 related to clean units be eliminated as follows:

(a) Any demonstration pursuant to section 5 of this rule ~~or 326 IAC 2-2.2-2(c)(2)~~ shall demonstrate that increased emissions caused by the proposed major stationary source, **or** major modification~~, or clean unit~~ will not exceed eighty percent (80%) of the available maximum allowable increases (MAI) over the baseline concentrations for sulfur

dioxide, particulate matter, and nitrogen dioxide indicated in subsection (b)(1). ... (TRI)

Comment: Similar to requirements for requesting a clean unit designation for emission units that have not previously received a major NSR permit that the agency has proposed to add under 326 IAC 2-2, the agency has added similar rule language in 326 IAC 2-3. This language states that the department must determine that the allowable emissions for the emissions unit requesting a clean unit designation in a nonattainment area will not cause or contribute to a violation of any national ambient air quality standard or any applicable PSD increment. However, unlike in 326 IAC 2-2, there are no corresponding sections in 326 IAC 2-3 that direct the applicant about what type of air quality analysis should be performed. We suggest that the agency clarify for those owners or operators who request a clean unit designation per 326 IAC 2-3.2-2 what the air quality analysis will entail. (TRI)

Comment: We believe that there is value in making the clean unit designation available to those emissions units that have not previously received a major NSR permit, even in nonattainment areas. We support the agency's development of rules to this affect. However, the current proposed revisions under 326 IAC 2-3 do not adequately develop for the interested owners or operators the procedures to follow related to the air quality analysis requirements. (TRI)

Comment: It does not appear to make sense that a demonstration of no violation of applicable PSD increments be made in a nonattainment area. By its classification as a nonattainment area for a pollutant, no increments are set and increment consumption is not relevant since the area in question does not meet the national ambient air quality standard for the nonattainment pollutant. (TRI)

Comment: The proposed provision, 326 IAC 2-2.2-1(d)(2)(A), disallowing the clean unit designation if the BACT determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type is contrary to the concept of BACT. The term "uncontrolled" implies post-combustion controls and as such ignores any emissions reduction benefits and additional expense incurred by an applicant to purchase and install an emissions unit that incorporates the latest in emissions reduction technology inherent in the design of that newest upgraded model of the particular piece of equipment. For example, a choice of a combustion turbine employing the latest in low-NOx emission reduction combustion technology in its design, without the addition of a post-combustion NOx control device, should not be disqualified if BACT for that unit has no additional control and it emits less NOx than the less expensive version of the same control technology. This provision should be modified to allow for clean unit designation for such a situation. (NIPSCO)

Comment: The provision, 326 IAC 2-2.2-1(d)(2)(A), should be modified to indicate that the "...investment to install the control technology..." includes the situation where an applicant incurs additional expense to purchase the lower emitting technology inherent in the design of an emission unit such as a control technology that includes low-NOx combustion technology as an inherent design feature. (NIPSCO)

Comment: In 326 IAC 2-2.2-1(d)(3), current-day BACT or LAER should be clarified to specify it is the BACT or LAER as of the date of the submittal of the clean unit designation application to IDEM. In 326 IAC 2-2.2-1(e)(1), 326 IAC 2-2.2-2(c)(4), and 326 IAC 2-2.2-2(d)(3), current-day BACT should be clarified to specify it is the BACT as of the date of the submittal of the clean unit designation application to IDEM. (NIPSCO)

Comment: In 326 IAC 2-2.2-1(g)(4), for clarity, it would be helpful if this provision specifically indicated the BACT or LAER is the BACT or LAER utilized for the clean unit designation. The following may be helpful:

"(4) All emissions limitations and work practice requirements adopted in conjunction with the BACT or LAER **for the clean unit,** and any physical...."

(NIPSCO)

Comment: The provision, 326 IAC 2-2.2-2(d)(1), purportedly addresses whether a unit's emissions control technology is equivalent to BACT determined at the time of the submission of the clean unit designation application to IDEM. IDEM also proposes to compare the applicant's presumption of being comparable to BACT, as listed in 326 IAC 2-2-1(i), with additional BACT or LAER determinations of which it is aware. We question whether the comparison to LAER is appropriate and believe it should not be included in any comparison for consideration of a presumptive determination of whether a unit's emission control technology is equivalent to BACT. (NIPSCO)

Comment: We believe it is unfair for the IDEM to be making comparisons to "additional ... determinations of which the department is aware". The applicants and IDEM should be utilizing the same database containing the same information for this process and, therefore, IDEM should make this database available at no charge to the applicant prior to the applicant's submittal of the application.

If IDEM retains the language of the "any additional ... determinations of which the department is aware", it should explicitly state in the rule language the information from this and any additional information obtained during the public participation period must be limited to information of determinations no more current than the date of the applicant's submittal of their clean unit designation application to the department. (NIPSCO)

Comment: On the renewal of a clean unit, the burden to require modeling for NAAQS for a renewal is an excessive expense to be required automatically. If at the end of a clean unit designation period, BACT or LAER has not changed for control of the pollutant or the clean unit is performing comparable to BACT or LAER, then the owner should be allowed to request a renewal with documentation of the BACT or LAER status, and provide test data to prove the unit is still complying within past limits set when the unit was first determined to be a clean unit. This renewal should be public noticed for 30 days. Modeling should only be required if BACT or LAER has changed significantly or there have been major changes to the NAAQS in the area. (NSC)

Pollution Control Projects

Comment: We support the revisions IDEM has proposed to the pollution control project exemption in this proposed rule. (AEP)

Comment: We urge that a full environmental analysis be performed for all PCP applications to determine not only the air quality impacts that would result from the project, but also impacts to water and solid waste streams. This multi-media analysis is critical for PCPs and other environmental permitting programs and should be adopted by all of the environmental regulatory boards. The NSR rules should require verification and approval by IDEM that a PCP will realize true environmental benefits. (CAC) (HEC) (SDC) (STV) (VWI)

Comment: We support IDEM's decision to adopt the pollution control project (PCP) exclusion directly from the federal rules and to conform the existing state regulations to reflect the listed projects and other elements of the new exclusion. We are concerned, however, with the change that IDEM proposes regarding minimizing collateral emission increases in nonattainment areas. We believe that this provision is inappropriate and should be revised. The test in the federal rule is whether the project is environmentally beneficial. If a project meets that test, it should be approved. (CASE) (ALCOA)

Comment: In 326 IAC 2-2.3-1(d)(4), the requirement to minimize collateral pollutants is overly broad in that it could be misunderstood to attempt to regulate pollutants in other media that are outside the authority of the Air Pollution Control Board and even other air emissions for which IDEM does not specifically have regulatory authority. We recommend this language be clarified to limit the minimization of emissions of collateral pollutants to regulated NSR air pollutants. The language should be clarified as follows:

> "...and in a way as to minimize, ... strategy, emissions of collateral **regulated NSR air** pollutants."

(NIPSCO)

Comment: In 326 IAC 2-3.3-1(d)(4) and 326 IAC 2-2.3-1(g)(1), for consistency, the language should be modified as follows:

> "...and in a way as to minimize, ... strategy, emissions of collateral **regulated NSR air** pollutants."

(NIPSCO)

Comment: We recognize that U.S. EPA states in the preamble to the NSR Improvement rule that "because increases in a nonattainment pollutant contribute to the existing nonattainment problem, your or the reviewing authority must offset with acceptable emissions reductions any significant emissions increase in a nonattainment pollutant resulting from a PCP." (67 Fed. Reg. 80237.) We do not interpret this statement to require that the collateral increase must be offset to zero as is implied by the draft regulatory language. Indeed, U.S. EPA refers to "acceptable emissions reductions." A source would not even be required to use the PCP exclusion if it were not projecting a greater than significant increase in emissions of a collateral pollutant. Any source projecting a less than significant increase would simply be required to track its emissions under the reasonable possibility test. Thus, any offsetting required should only need to reduce the

projected actual increase level down to the significant level. (CASE) (ALCOA)

Comment: IDEM should clarify in the rule that this offset requirement would not apply where the collateral increase is of a substance that is a precursor for the same NAAQS pollutant. In other words, if a PCP would reduce VOC but slightly increase NOx in an ozone nonattainment area, the source should not be required to offset the NOx emissions since NOx and VOC are both precursors to the same NAAQS pollutant, ozone (unless the area was also not in attainment for NOx). (CASE) (ALCOA)

Comment: The length of time to procure and install equipment varies widely and is immaterial to the issue of public notice. We maintain that adoption of U.S. EPA's approach in not requiring a public comment period for changes related to a pollution control project should be adopted. (INCMA)

Comment: We reject IDEM's statement that it is not necessary for IDEM to draft a procedure for adding projects to the list because they lack authority to do so. We believe it is within IDEM's authority and responsibility to identify environmentally beneficial projects even with federal endorsement. (INCMA)

Comment: We believe there is an opportunity to further pollution prevention efforts in Indiana in the qualification of pollution control projects as "listed" versus "unlisted". Neither IDEM's draft NSR rule or U.S. EPA's rule provide a mechanism for proven and tested environmentally beneficial pollution control projects that are unlisted to become listed, thereby becoming eligible for the advantages afforded to listed projects. In order to provide an avenue for unlisted environmentally beneficial pollution prevention projects to become listed, thereby making available the less burdensome minor permit modification provisions, an avenue for unlisted, proven pollution control projects to become listed should be developed. (PPP)

Comment: It is expensive for sources to pay a consultant to prepare an application for a significant permit modification, pay a $3,500 fee and pay for the equipment or the project to be implemented. Treating a pollution control project the same as an emissions unit project will only serve to discourage sources from installing pollution control equipment or implementing projects that reduce emissions. (INCMA)

Comment: We appreciate IDEM's decision to adopt the federal pollution control project exclusion provisions, however, we still believe it is necessary to define what the requirements are for conducting an air quality analysis for a pollution control project, as the requirements are not defined in the rule. (INCMA)

Comment: We believe there may be opportunities to further pollution prevention efforts in the assessment of pollution prevention projects for determination of environmental benefits. Currently, this review limits the review to air emissions. An NSR review of pollution prevention projects should take into account reductions in air emissions, pollutant levels in and the quantity of wastewater generated and discharged as well as volumes and toxicity of solid waste streams. A project with minimal benefits in air quality could have significant environmental benefits in the areas of water and land, still making it a beneficial pollution prevention project that should be

eligible for the benefits afforded by the revised NSR rules. Should this not be allowed by the federal NSR rule, we would like to see IDEM discuss this issue with U.S. EPA in an effort to make further progress on this issue. (PPP)

Plantwide Applicability Limits

Comment: We believe that, if IDEM proceeds with a PAL, that the rule should prohibit emission increases and that the rules should require revocation of the PAL if the source is found to be in violation of the PAL. The rules should also require that emissions decrease over time (a declining cap) to ensure progress is made towards cleaner air. We appreciate and support IDEM's position that PAL determinations will be subject to public review. (CAC) (HEC) (SDC) (STV) (VWI)

Comment: While we agree that IDEM should retain discretion to make a fair and equitable allocation of the emissions under a PAL upon termination, we view the "sham PAL" scenario described at the September 10, 2003, public meeting as highly unlikely, given the investment that is required to develop a PAL. We also believe that sources will legitimately rely on their ability to make changes under the PAL and that they should not be penalized if a valid reason for early termination arises. (CASE) (ALCOA)

Comment: We agree with IDEM that any source proposing to terminate a PAL should propose how the emissions should be allocated. IDEM's rules should provide that, as long as the source's proposal is reasonable and does not represent circumvention of the rules, it should be adopted in the new permit terminating the PAL. (CASE) (ALCOA)

Comment: We are concerned with IDEM's proposed treatment of a PAL upon termination. We think that when a PAL expires, the PAL limit should continue to be an enforceable plantwide limit, but that it would no longer serve the purpose of being the threshold for NSR. In this way, the plantwide limit would continue to serve its purpose of limiting emissions without creating new significant constraints that would arise with the desegregation of that limit. While the PAL cap would remain in effect, just as plantwide synthetic minor limits do at non-PAL facilities, changes after the PAL expires would need to be considered under the conventional NSR applicability criteria. In effect, the PAL would become a simple facility-wide limit. Under IDEM's draft NSR rules, companies with a terminated PAL are to continue to operate under the PAL limit until a revised permit is issued. We recommend that sources with terminated PALs be required to continue to demonstrate compliance with the facility-wide limit.

If IDEM believes that such an approach is not feasible for certain PAL sources, we recommend changes to its draft approach. Specifically, IDEM should not reallocate PAL emissions based on emission limits that were eliminated by a PAL. As U.S. EPA pointed out in the final NSR reform rules, the plant may have made changes under the PAL that would make it difficult or impossible to assign the old limits to the current equipment or meet old limits. We recommend that the reallocation of a PAL begin with a proposal from the PAL owner. As long as the proposal from the PAL owner is practically enforceable and demonstrates that the overall PAL emissions limit is met, then IDEM should approve that proposal.

We are concerned that the lack of certainty regarding the treatment of PALs when they are terminated or revoked would make this valuable NSR reform measure too risky for most companies to use. A company considering a PAL needs to know with some certainty that, when

a PAL is terminated, its facility will not be put into a position of noncompliance due to an unachievable reallocation of the PAL. (DCC)

Comment: Under 326 IAC 2-2.4-1(b), it states that the department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements of the rule. IDEM has not used "shall" in the language. Is IDEM retaining discretion to deny a PAL even if a source meets the requirements? If so, under what circumstances could a PAL be denied even if the source complied with the requirements? (INCMA)

Comment: In the definition of PTE under 326 IAC 2-2.4-2(k), "secondary emissions do not count in determining the potential to emit of a source". Secondary emissions are not defined. What does IDEM mean by "secondary emissions?" (INCMA)

Comment: This requires that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions. It does not include the language "if quantifiable". What protocol has IDEM provided to U.S. EPA for sources to enable them to make this compliance determination? (INCMA)